IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 2225 of 1992

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

---

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT
VERSUS
BHIKHABHAI KALAJI THAKORE

Appearance:
MR UMESH TRIVEDI, AGP, for Petitioners
MR HJ NANAVATY for Respondent No.1
None present for other Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 13/03/2001

C.A.V. JUDGMENT

#. By this petition under Article 227 of the Constitution of India, the State of Gujarat and District

Education Officer, Ahmedabad, challenges the order dated 22-11-1991 of the Gujarat Secondary Education Tribunal at Ahmedabad in Application No.165/91 wherein the application was partly allowed and the respondent-teacher was declared to be entitled to opt for the pension scheme with certain conditions and further allowed him to proceed on voluntary retirement w.e.f. 1-6-1985 and the Department has been directed to sanction his voluntary retirement application,if he applied for the same. Prayer has also been made for quashing and setting aside of the order aforesaid of the Tribunal.

#. Learned counsel for the petitioners challenging the validity, legality and propriety of the order impugned in this special civil application raised the following contentions:

(a) Whether Secondary Education Tribunal has jurisdiction to pass any Order against and/or direct the petitioners namely Government and its officers under section 38 read with Sections 39 (4), 40 (2) and 36 (5) of the Gujarat Secondary Education Act, 1972 ?

(b) Whether the Tribunal is right in Law in declaring the respondent No.1 entitled to opt for the pension scheme and directing the petitioners-Government to allow the said request of respondent No.1, who is convicted by the Court of Law in view of Rule 39 red with other Rules of Revised Pension Rules, 1950.

c) Whether the Tribunal is right in Law in declaring the Respondent No.1 entitled to opt for pension scheme and that too retrospectively in view of the fact that the event of prosecution and conviction of respondent No.1 had affected the eligibility for pension and the "No Event Certificate" to be submitted to the Treasury Office by the Respondent No.1 after obtaining counter signature of the petitioner No.2 cannot be granted in view of his prosecution and conviction?

(d) Whether the Tribunal is right in Law in directing the Petitioner Government to sanction the proposal of Respondent No.1 for voluntary retirement with retrospective effect and that too before obtaining the eligibility from Director of Pension and Provident Fund?

(e) Whether the Tribunal is right in Law in directing the Petitioner Government to sanction the proposal of Respondent No.1 for Voluntary retirement with retrospective effect though there being no provision under the scheme for voluntary retirement with retrospective effect?

(f) Whether the Tribunal is right in Law in declaring the respondent No.1 - entitled to voluntarily retire retrospectively in view of the provisions of the Scheme, which requires the employee to give Notice of three months to the Appointing Authority before retirement and no such Notice having been given by the Respondent No.1 ?

(g) Whether the Tribunal is right in Law in declaring the Respondent No.1 entitled to voluntarily retire though it is the Government, who has power either to accept or reject such a proposal for voluntary retirement and thereby can Tribunal assume the powers of the Petitioners namely Government ?

(h) Whether the Tribunal is right in Law in allowing the Respondent No.1 to voluntarily retire and directing the Petitioners to sanction the said proposal in view of the fact that the Respondent No.1 was prosecuted and convicted by the Competent Court of Law, which is contrary to Clause 7 of the Scheme ?

(i) Whether the Tribunal is right in Law in granting the relief/reliefs, which was never asked for by the Respondent No.1 in his Application No.165 of 1991 ?

#. Learned counsel for the respondent-teacher supported the order of the learned Tribunal.

#. The facts of the case, which lead to filing of this special civil application are to be briefly stated:

The respondent No.1 was appointed as teacher in the school run by the respondents No.2 and 3 on 11-6-1962. He was appointed as teacher in the secondary section of the school. The respondent-teacher was involved in a murder case as the prime accused. He was prosecuted and convicted by the Court of Additional City Sessions Judge, Ahmedabad for life imprisonment under

section 302 of I.P.C. and sentenced to undergo rigorous imprisonment for a period of six years for having been guilty of offence under section 307 of I.P.C.. He was also convicted and sentenced to undergo rigorous imprisonment for a period of one year for being guilty under section 147 of the I.P.C. It is not in dispute that against the judgment of the Additional Sessions Judge, Ahmedabad, the respondent-teacher preferred an appeal before this Court and his conviction under section 302 of I.P.C. was converted under section 304 Part II of IPC as what it is admitted by Shri H.J. Nanavaty, learned advocate appearing for him. The respondent-teacher for his involvement in a criminal case was placed under suspension by the school Management from services under the order dated 26-4-1985. The respondent-teacher filed an Application No.165/1991 before the Gujarat Secondary Education Tribunal, Ahmedabad, and therein prayer has been made for direction to the Management to pay full salary to him from 1-4-1985. Further prayer has been made for declaration that the action of the respondent-school of nonpayment of full salary to him during the suspension is illegal, improper and void. This application came for hearing before the Tribunal on 10-7-1991. On 10-7-1991, the application was kept for hearing of interim injunction. Learned Tribunal declined to grant any interim injunction in favour of the teacher on the grounds, (i) he has approached to the Tribunal after a period of six years from suspension and (ii) the teacher is serving some term in the jail though his appeal is pending in the High Court. It appears from the order of the Tribunal dated 10-7-1991, that orally it is submitted on behalf of the teacher that he is not after full and regular salaries, if his proposal for voluntary retirement is accepted by the School and the Department and he is relieved on voluntary retirement. What he stated that he has put in more than 20 years of service, he is likely to get benefit of pension scheme on his voluntary retirement. The Tribunal then observed that for voluntary retirement, two things are necessary. First is that he has to opt for pension scheme and option has to be accepted by the Department and second, teacher should then forego the rights for active service from 19-6-1985 and may be considered on leave without pay and he may be allowed to retire voluntarily on giving application which may be forwarded by the school and may be accepted by the Department. The Tribunal then observed that for this purpose, the cooperation of the school and the Department would be necessary so that the applicant is not deprived of his chances of pension on his retiring voluntarily. Certain direction has been

given to the school and Department re. processing the request of the teacher to consider and treat him on leave without pay from January, 1985 and to process the request for opting for pension scheme for retiring voluntarily. The matter was finally decided on 22-11-1991. The application was partly allowed, as stated earlier. The request of the teacher to grant him full and regular salaries during the period of suspension was rejected. This application, after this order should have been dismissed but alternative prayer of the applicant made orally has been granted as stated earlier and the order has been passed.

#. This special civil application has been admitted on 1-4-1992 and interim relief in terms of para-18(B) has been granted which continues till date. Subsequent developments which have taken place after filing of this petition have to be stated. The services of the teacher were brought to an end under the order dated 18-6-1992. This has been challenged by the respondent-teacher by filing an application No.352/92 before the Gujarat Secondary Education Tribunal at Ahmedabad. On 21-10-1999, the Tribunal adjourned this application sine die on the ground that the hearing of the same will be taken up only after the outcome of this special civil application.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. I am in agreement with the contention raised by the learned counsel for the petitioners that the Tribunal has exceeded its jurisdiction in passing of the impugned order. I am also in agreement with the learned counsel for the petitioners that the Tribunal has granted relief in favour of the teacher which otherwise was not prayed for.

#. The respondent-teacher has been convicted for commission of serious offence by him by the learned Sessions Court and this Court also maintained the conviction with slight modification converting it from section 302 IPC to 304 Part II, IPC. Once a teacher has been convicted for criminal offence, it is open to the Appointing Authority to dismiss him from the services. On conviction of a teacher, it is not necessity under law to hold a detailed full-fledged inquiry, In this case, after his conviction, the teacher has been dismissed from the services and rightly so. The Tribunal in this case has proceeded as if it is sitting to find out ways to give relief to teacher. In the

application which has been filed by the teacher before it, he has only prayed for giving direction to the Management to pay him full salary during suspension. That relief has not been granted by the Tribunal in favour of the teacher and the application should have been rejected. I fail to see any justification in the approach of the Tribunal as what it reflects from tis order dated 10-7-1991. From this order, I am satisfied that undue favour have been extended to this teacher. At this stage, the Tribunal was considering the prayer of grant of interim relief in favour of the teacher. The Tribunal has considered it to be a fit case where interim relief is not to be granted in favour of the teacher and after this order, the Tribunal has no concern or business or jurisdiction to go to the extent to find out ways how to grant relief to teacher who has been suspended pending criminal case, and who has been ultimately convicted for offence under section 302, IPC and other offences. The learned Tribunal was not called upon nor it was its jurisdiction to go on this question that the Teacher can opt for pension scheme and he can also opt for voluntary retirement. I fail to see any justification in the direction as given by the Tribunal to the School and the Department under its order dated 10-7-1991 to process the request of the respondent-teacher to consider him on leave without pay from June, 1985 and to process the request for opting for pension scheme and retiring voluntarily. This is nothing but only a favour which has been extended to the teacher by the Tribunal. It is a case where the Tribunal has made an attempt to continue the services of the respondent-teacher so that his application for voluntary retirement may be processed. It is a matter for consideration of the Department how to regularise the period of suspension in case where ultimately he would not have been convicted in criminal case and to consider his case for reinstatement in service. He has been convicted for a heinous offence and as such there would not have been any occasion for considering his case for reinstatement in service. Only occasion would have been to dismiss, remove or terminate his services even without holding a departmental inquiry. That precisely has been done in the present case by the petitioners.

#. In the final order on application of the teacher, the Tribunal rejected the prayer made by the teacher and the application would have been dismissed but the Tribunal passed an order which otherwise would not have been permissible to this Court also under Article 226 of the Constitution. The Tribunal has no jurisdiction to

give such a direction and declaration to the petitioners. Whether the respondent-teacher is entitled for pension scheme or not, is not a matter to be decided and gone into by the Tribunal. Similarly, the Tribunal has exceeded its jurisdiction in giving direction to the school and the department to allow the respondent-teacher to proceed on voluntary retirement w.e.f. 1-6-1985, meaning thereby, the Tribunal decided that the respondent-teacher has to be allowed to go on voluntary retirement. Learned Tribunal by giving this direction completely lost the sight of the fact that these are the matters for consideration of the School and the Department. Voluntary retirement is not a right of an employee. It is a matter to be considered and in appropriate case, the Department may be legal and justified to permit an employee to go on voluntary retirement. Similar is the matter for pension scheme. Under the resolution dated 21-12-1971, reference of which has been made by the petitioners in the petition, the Revised Pension Rules, 1950, and Family Pension Scheme was made applicable to the teaching and nonteaching staff of the non-Government secondary schools. Those members of the staff of non-Government Secondary Schools who were eligible for Contributory Provident Fund benefit were given option to elect within one year from the date of resolution either to continue under the Contributory Provident Fund Scheme or to come under the Pension scheme. This resolution was amended vide resolution dated 11-3-1981 and it was amended to give option for pension scheme within one year from the date of the retirement. I do not find on the record of this special civil application, reply to the special civil application from the side of the respondent-teacher. It is also not the case of the respondent-teacher that reply to the special civil application has been filed. So the averments made in the special civil application stand uncontroverted. It is not the case of the respondent-teacher that he opted for the pension scheme within stipulated period, as what it is provided under Resolution of 1971. Reference has also been made to the Government Resolution dated 14th August, 1978 and the Voluntary Retirement scheme was made applicable to the teaching and nonteaching staff of non-Government schools. Revised Pension Scheme Rules, 1950 and Rule 39 thereof gives right to the Government to o withhold or withdraw such a pension or any part of it if the recipient be convicted of serious crime or be guilty of grave misconduct and Government decision in such matters will be final. Leaving apart this provision of Revised Pension Rules, 1950, if we go by the Bombay Civil Services Rules 1959, which deals with

the provision of pension and voluntary retirement, it is not a matter of right of employee in a case where criminal case is pending against the employee to go on voluntary retirement. Naturally when he is not allowed to go on voluntary retirement, leaving apart the fact whether he opted for pension or not, there is no question of giving him the pension. It is really shocking that at a stage where against the respondent-teacher a criminal case is pending and he has been convicted, how far, such a relief could have been granted by the Tribunal, which possibly otherwise could not have been granted by the Department itself. The respondent-teacher acted very cleverly in the proceedings before the Tribuna, and as stated earlier, the Tribunal also proceeded in the manner so as to find out some way to give benefit to this person and though the Tribunal has not granted interim relief, for which the teacher had approached it, it granted another relief, which could not have been granted by it. The respondent-teacher cleverly acted and got from the Tribunal much more than what otherwise relief could have been granted to him. He was clever in his approach to give up the claim for subsistence allowance during the period of suspension and arranged for his lifetime benefits. This conduct of the respondent-teacher deserved to be deprecated. The Tribunal could not have given such a direction to the school and the department. The matter of voluntary retirement is in between the employee and the employer and for this, the Tribunal has no jurisdiction to ask the school and the department to permit the teacher to go on voluntary retirement. This is nothing but only usurping the jurisdiction and the power of the Department. It is understandable where the teacher applied for voluntary retirement and it is not accepted then there may be a case for consideration of the Tribunal but not at the stage where even the respondent-teacher has not applied for voluntary retirement to the Department. This what is said is not to be taken as if the Court is opining that the teacher is entitled for voluntary retirement. The respondent-teacher, otherwise also, cannot be permitted by the Department, in the facts of this case, to go on voluntary retirement. When he cannot be allowed to go on voluntary retirement, no question does arise of giving him the pension. After conviction of the respondent-teacher, only order could have been of dismissal, removal or termination of his services. The respondent-teacher has already attained the age of superannuation on 31-5-1995 and the Management is perfectly legal and justified in the matter to dispense with the services of the respondent-teacher. Though the

order of Management and Department to terminate the services of the respondent-teacher is pending for consideration before the Tribunal, the decision, in this case only relates to the order passed by the Tribunal in Application N.165/91. Whatever observations made re. the order of termination of services of the respondent-teacher may not be taken to be final decision in the matter. These are the observations made for the purpose of deciding this petition and the same may be confine to this matter only. Learned Tribunal is free to decide the matter re. termination of services of respondent-teacher in accordance with law without having any effect and without having been influenced by the observations made in this judgment.

##. In the result, this special civil application succeeds and the same is allowed and the following part of the order of the Tribunal dated 22-11-1991 in Application No.165/91 is quashed and set aside.

"However, the alternative prayer of the applicant that he should be allowed to opt for the pension scheme and that he should be given the benefits of voluntary retirement on his submitting the necessary proposals, are granted. The applicant is declared as entitled to opt for the pension scheme on the condition of the school management's depositing the management share in the treasury as per rules. The applicant's contribution to the provident fund will have to be paid to him as per rules. After allowing the applicant the option for pension scheme, the Department is further directed to allow the applicant to proceed on voluntary retirement w.e.f. 1-6-85. The applicant is directed to submit a proper proposal for voluntary retirement, to the Deptt. and the deptt. should process the same and within three months of the receipt of the proposal, sanction voluntary retirement of the applicant w.e.f. 1-6-85. The opp. school is directed to deposit the management share in the Govt. treasury as per rules and also prepare, complete and submit all the necessary papers for the purpose of voluntary retirement."

Rule is made absolute. In the facts of this case, no order as to costs.

****

zgs/-